IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 16850 of 2004

Between:

Md.Abdul Azeez Khan, S/o.Mohd Nizamuddin Khan,
Regional Enforcement Squad RM office, HCRM, JBS,
Picket, Secunderabad.

..... PETITIONER

AND

The Regional Manager, APSRTC, JBS, Picket, Secunderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of mandamus declaring that the action of the respondents in not paying the gratuity amount to the petitioner for the out of employment period i.e., from 12-5-1973 to 25-1-1985 as illegal, arbitrary, bad and contrary to the judgments/award and consequently direct the respondents to pay the gratuity for the said period.

Counsel for the Petitioner: MR.P.VENKATESWAR RAO

Counsel for the Respondent: MR.V.T.M.PRASAD,SC for APSRTC

The Court at the stage of admission made the following :

ORDER:

The petitioner is a retired employee of the respondent Corporation. He was appointed as a Conductor on 1-11-1970 he was removed from service in a departmental enquiry on 22-10-1973. He was reinstated into service through an order of Additional Industrial, Hyderabad, dated 28-8-1984 in I.D.No. 78 of 1981. He was reinstated with continuity of service with all attendant benefits except the back wages. The petitioner subsequently while working with the respondent Corporation retired with effect from 29-2-2004.

The grievance of the petitioner is that he was not paid gratuity for the period from 12-5-1973 to 25-1-1985 i.e. the period from the date of suspension till the date of reinstatement. The petitioner, therefore, approached this Court, through this Writ Petition seeking a declaration that the action of the respondent in not paying the gratuity as illegal, arbitrary and contrary to the judgment of this Court.

The learned counsel for the petitioner relied on a judgment of a Single Bench of this Court. In ***M.Rama Rao Vs. Traffic Manager, APSRTC, Hyderabad,*** this Court held while considering the scope of Section 11 of Industrial Dispute Act, 1947;

> " Management cannot deny payment of gratuity to the petitioner on his retirement from service for the period for which he was out of employment, as a result of the order of removal."

I concur with the view expressed by the learned Judge, in the above decision and I am inclined to direct the respondent to pay the gratuity to the petitioner for out of employment period.

In the result, the Writ Petition is allowed. Respondent is directed to pay the gratuity to the petitioner for out of employment period from 12-5-1973 to 25-1-1985 within two months from the date of receipt of a copy of this order by working out the amount payable to him under the relevant Rules. No order as to costs.

---------- Dr. G.Yethirajulu, J

20th September, 2004.
KM Sd/-

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Regional Manager, APSRTC, JBS, Picket, Secunderabad.

2. 2CD copies

THE HON'BLE DR JUSTICE G.YETHIRAJULU

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20th September, 2004.